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NOTES.

BOYCOTT—WHEN LEGAL—May members of a union lawfully refuse to work for those employers who continue to do business for customers who also do business with a non-union shop? Or, in other words, is it lawful for members of a union to force to the wall one who refuses to unionize his shop, by threatening to leave their employers unless the latter insist upon their customers refraining from doing business with him who employs non-union men? This is the rather complicated question which arose in the case of *Gill Engraving Company* v. *Doerr*.[1] The test there applied was an inquiry into the legality of the object of the union and the means of attainment. The court found that the object was to increase the power of the union, and the means applied thereto were legal.[2] Inasmuch as the defendants were found to be employing legal means to gain a legal end, the injunction was refused.

[1] 214 Fed. Rep. 111 (1914).

[2] The case came up on motion for an injunction *pendente lite*.

Upon the question as to when a boycott is legal the courts are at great variance and many different tests have been applied. Purpose, object, motive, malice, means, combination, conspiracy, privilege and justification have all formed the basis of decisions upon this subject. The chief cause for the difference in results reached, however, may be attributed to the original starting point in the analysis of any one case. Shall the court commence by tracing out the conduct of the defendants to see if they have committed any illegal act, or shall it begin its investigation at the point where injury was suffered by the innocent plaintiff and look back from there to find the cause of such injury? The result reached will depend in large measure upon which one of these courses is followed.

The test of the principal case is that most generally applied,—is the object in view a legal one and are the means employed also legal?[3] But when we have come this far, the question arises as to what the object really is. The immediate and direct result of the employees' action is the injury to the business of the employer. The remote and indirect result is the benefit to the employees. Their organization has gained strength and more work is secured for their members. Which of these two is the so-called object? The courts are in conflict as to how this question should be answered and it is almost impossible to foretell the decision upon any given state of facts.[4] Cases within the same jurisdiction cannot be reconciled.[5]

The decisions in practically all of these cases of boycotting are largely influenced by considerations of public policy rather than by application of legal principles. The main question as to what is the object of the union will elicit entirely different answers dependent upon the point of view from which it is approached. Shall the labor organizations be approved and encouraged or shall their rapid advance be checked? This is really the underlying proposition. One who feels that the working man is downtrodden and oppressed, will doubtless decide the boycott to be legal, while another man of equally sound mind will consider as paramount the right of the employer to trade freely.

Looking at the situation from the standpoint of the employer, should he not have a right to do business with whom he will, at his pleasure? Should he be left without redress from injury suffered at the hands of those who are forcing upon him the alternative of employing union men or doing no business? The right to a free

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[3] Newton v. Erickson, 126 N. Y. Supp. 949 (1911); Rosenau v. Empire Circuit Co., 115 N. Y. Supp. 511 (1909); Curran v. Galen, 152 N. Y. 33 (1897); National Protective Ass'n v. Cumming, 170 N. Y. 315 (1902); Macauley Bros. v. Tierney, 19 R. I. 255 (1895); Lindsay & Co. v. Montana Federation of Labor, 37 Mont. 264 (1908).

[4] Purvis v. Local No. 500, 214 Pa. 348 (1906); Macauley Bros. v. Tierney, *supra;* American Federation of Labor v. Buck's Stove Co., 33 App. D. C. 83 (1909).

[5] Newton v. Erickson, *supra;* Gill Engraving Co. v. Doerr, *supra.*

market has been advanced in a few cases.[6] It is submitted that this theory, although difficult of application, is founded upon sound legal principles. Every person has, or should have, a right to dispose of his goods without molestation from those in no wise connected with the immediate transaction.

If it be granted that one has a right to be free from outside interference in his effort to carry on his business, it would naturally follow that all others owed him a duty not to interfere. When we then find pressure being brought to bear upon the employer's customers, we know that his right has not been respected and that those whose actions caused the injury have been guilty of a breach of duty. The right of the one and the correlative duty of the others should be taken as the starting point from which the analysis of the facts is made.

A breach of the employer's right having been discovered, the employees are *prima facie* liable for the injury suffered. Upon what grounds, then, if any, shall the employees be excused from answering to the employer and making redress for the injurious results of their acts? Can it be said that the advancement of their own private interests is such an object as to justify their mode of conduct and relieve them from all liability towards the employer? To be sure, this question has been answered in the affirmative by many, and the court in the principal case went so far as to say that such an object was "now regarded as laudable."[7] But in spite of this authority, we cannot submit to a theory setting forth the idea that what would otherwise be an unlawful proceeding may be made lawful by the fact that the perpetrators thereof are to reap benefit for themselves therefrom.

When the employee's conduct has been once established as *prima facie* illegal, some justification more powerful than self-advancement should be substantially proven before they are freed from liability. It is commonly admitted that public policy must govern this situation.[8] But what is public policy? Surely it is not that which bestows benefit upon one class of individuals, forbids redress to him who was injured while innocently engaged in carrying on his business, and accomplishes nothing in the interest of the public. In order successfully to plead public policy as an excuse for the open interference with the employer's right to do business, it should be shown that the interests of the community at large were beneficially affected. Those who cause injury to an innocent man should pay the penalty therefor unless they show a more substantial justification than the gratification of a purely selfish desire to strengthen the union of which they are members.

J. N. E.

[6] See the elaborate opinion of Vice Chancellor Stevenson in Booth v. Burgess, 72 N. J. E. 181 (1906).

[7] Page 120.

[8] See opinion of Holmes, J., in Vegelahn v. Gantner, 167 Mass. 106 (1896).